

The Examiner objected to the drawings under 37 C.F.R. 1,83(a) as failing to show the conical shape of the opening as recited in claim 49. (Office Action, paragraph 1). Applicants have amended claim 49 to refer to a “substantially circular” opening consistent with Fig. 4B and the specification. Accordingly, Applicants respectfully request that the objection to the drawings be withdrawn.

Rejection of Claim 49 Under 35 U.S.C. §112, Second Paragraph

As discussed above, Applicants have amended claim 49 to recite a “substantially circular opening.” Accordingly, Applicants respectfully request that this rejection of claim 49 be withdrawn.

Applicants do not believe that this amendment narrows the scope of the claim. Such amendment is not made to overcome any prior art. No new matter is believed to have been added by this amendment.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 22-25, 27-30, 43, and 46-48 were rejected under 35 U.S.C. § 102(b) as being anticipated by Douglas, U.S. Patent No. 3,696,915.

Applicants have amended claim 22 to clarify that the claimed lancets include “a needle.” This amendment is supported by the specification, for example at pp. 12-13. Thus, no new matter is added. Further, because this amendment merely clarifies the meaning of the term “lancet” as used throughout the application, Applicants do not believe that this amendment narrows the scope of the claims.

Douglas does not disclose, teach, or support “lancets” as claimed and disclosed by Applicants; in particular, lancets “including a needle” as recited in amended claim 22.

Since claims 23-25, 27-30, 43 and 46-48 all depend, directly or indirectly, from independent claim 22, the additional limitations of these claims do not make them unpatentable. See, e.g., MPEP §2143.03, at 2100-126 (Rev. August 2001) citing In re Fine, 837 F.2d 1071 (Fed. Cir. 1988)).

For at least these reasons, claims 22-25, 27-30, 43 and 46-48 are patentable over Douglas. Applicants respectfully request that this rejection be withdrawn.

Claim Rejections Under 35 U.S.C. § 102(e)

Claims 22, 23, 27-29, 31, 43, 50 and 51 were rejected under 35 U.S.C. § 102(e) as being anticipated by Nguyen et al. (5,829,589) ("Nguyen '589"). (Office Action, page 4). Applicants resubmit and incorporate by reference their arguments made in response to the April 4, 2001 Office Action respecting this reference.

In addition, this rejection is improper because the rationale of Ex parte Masham is inapplicable. Masham does not apply because the claims contain a structural limitation that is not taught by Nguyen '589.

Nguyen '589 discloses a storing and dispensing apparatus for pen needles used to inject medication into the body. Col. 2 lines 46-51. Nguyen says nothing about using its pen needles to collect body fluid i.e., to draw fluid out of a body.

Nguyen '589 does not disclose, teach or suggest "a lancet magazine comprising a transport device adapted to transport lancets." Nguyen '589's purported "transport device" 30 is merely a container which stores pen needle assemblies 100. The Examiner has misinterpreted Nguyen '589's disclosure. Container 30 does not move, and thus, does not "transport" anything. Instead, cover 20 rotates with respect to container 30 to move slot 21 over a loaded cavity 31 of container 30. Col. 4 lines 15-16. Cover 20 is rotatably mounted on container 30. Col. 4 line 13. Cover 20, not container 30, rotates to find a loaded cavity 31. See e.g., Col. 4, lines 24-25, lines 33-35, line 42, lines 50-53. Even though cover 20 rotates, it does not transport lancets, either. Cover 20 merely rotates to expose a cavity containing a needle assembly.

Thus, the claimed transport device is a structural limitation not disclosed, taught or suggested by Nguyen '589 and the rationale of Ex Parte Masham is inapplicable. For at least

these reasons, Nguyen '589 does not anticipate independent claim 22 nor any of claims 23, 27-29, 31, 43, 50 or 51 and such rejection should be withdrawn.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 32, 44 and 45 were rejected under 35 U.S.C. §103(a) over Nguyen '589, and Nguyen '589 in view of Nguyen (5,873,462) ("Nguyen '462"). Like claim 22, these claims each recite a transport device.

Nguyen '462 discloses a pen needle dispenser similar to that disclosed in Nguyen '589. Nguyen '462 does not disclose, teach, or suggest a transport device as claimed. For the reasons explained above, Nguyen '462 and Nguyen '589 in combination do not disclose, teach or suggest a lancet magazine having a transport device adapted to transport lancets, as claimed. Further, as to claim 32, neither reference teaches or suggests the use of a pin as claimed.

New Claim

New claim 52 is added. Applicants submit that none of the prior art of record discloses, teaches or suggests "means for ensuring proper positioning of the lancet prior to removal of the lancet from the magazine" as recited in new claim 52. Support for new claim 52 is found, for example, at page 9, paragraph 4 and page 10 paragraph 1 of the specification. Accordingly, Applicants respectfully request that new claim 52 be allowed.

Final Remarks

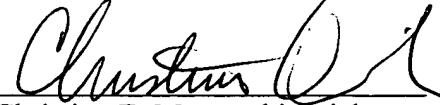
For at least the reasons stated above, all of the pending claims 22-32 and 43-52 of the above-noted application are believed to be in condition for allowance. Applicants respectfully request that the Examiner so find and issue a Notice of Allowance in due course.

The Examiner is asked to call Applicants' attorney, Christine E. Mayewski Orich at 317-684-5414, or James A. Coles at 317-684-5251, to address any outstanding issues in order to expedite the prosecution of this application for all parties.

If necessary, Applicants request that this Amendment be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this Response be charged to the account of Bose McKinney & Evans, Deposit Account No. 02-3223.

A CHANGE OF CORRESPONDENCE ADDRESS is submitted as a separate paper herewith.

Respectfully submitted,



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APPENDIX

MARKED-UP VERSION OF CLAIMS

22. (Twice Amended) A system that is suitable for collecting bodily fluid from a region of the body of a person to be examined, the system comprising:

 a lancing device which is suitable for holding a lancet [and for guiding the lancet to pierce the skin of a person to a defined puncture depth], the lancet including a needle, and

 a lancet magazine for storing a plurality of lancets, the lancet magazine comprising

 a transport device adapted to transport lancets and
 an opening into which the lancing device can be inserted to remove an individual lancet from the lancet magazine.

49. (Amended) The system of claim 22, wherein the opening has a [conical] substantially circular shape.